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September 23, 1999

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Petition for Arbitration of ICG
Docket No. 99-00377

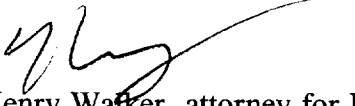
Dear David:

Please find enclosed an original and thirteen copies of ICG Telecom's Reply to BellSouth's Exceptions in the above captioned proceeding.

Thank you for your assistance in this matter.

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:


Henry Walker, attorney for ICG

HW/nl
cc: Guy Hicks, attorney for BellSouth

FILE

BEFORE THE TENNESSEE REGULATORY AUTHORITY

REC'D TN
REGULATORY /

'99 SEP 23 PM

In Re: Petition by ICG TELECOM GROUP, INC.)
for Arbitration of an Interconnection)
Agreement with BELL SOUTH)
TELECOMMUNICATIONS, INC. Pursuant to)
Section 252(b) of the Telecommunication)
Act of 1996)

Docket No. 99-00377

OFFICE OF THE
EXECUTIVE SECRETARY

ICG'S REPLY TO BELL SOUTH'S EXCEPTIONS

ICG Telecom Group, Inc. (ICG) supports the September 13, 1999, "Report and Initial Order" of the Hearing Officer, Gary Hotved. For that reason, ICG did not file any objection to the Hearing Officer's Report. ICG, however, submits the following brief response to the objections filed by BellSouth Telecommunications, Inc. (BellSouth).

1. Packet Switching, Volume and Term Discounts, and Binding Forecasts.

BellSouth argues that, because these issues are not mentioned in the federal Telecommunications Act of 1996 or mandated by the FCC in its recent UNE order, the TRA has no authority to consider those issues in this proceeding.

The TRA, however, may consider any "terms and conditions" of an interconnection agreement and may also consider any UNEs, in addition to those listed by the FCC, as long as those additional terms and/or UNEs are "consistent with the requirements of Section 251." See, "Summary" of the FCC's September 5, 1999, Order, page 2, last paragraph. (A copy of the "Summary" is attached to BellSouth's objections.)

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As the Hearing Officer correctly observed, the TRA may consider any terms desired by the parties which are reasonably related to an interconnection agreement and not "precluded from arbitration" by the federal Act.¹

2. Performance Measurements and Liquidated Damages

BellSouth's objections merely reargue the company's position on this issue. In response, ICG relies upon its position as stated in the issues matrix:

Pending the establishment of a Tennessee-specific plan which includes performance standards and liquidated damages, ICG recommends that the TRA adopt in the interim the performance standards and penalties recently adopted by the Texas Public Utilities Commission. The Texas Plan adequately address each of the performance related issues raised in this arbitration.

Having argued at length that liquidated damages are appropriate for inclusion in BellSouth's tariffs and Contract Service Arrangements, BellSouth cannot seriously now contend that the TRA has no authority to consider such penalties or that liquidated damages are not a useful method of ensuring compliance with contracts and tariffs.

In Texas, Southwest Bell and the other parties came to an agreement on performance measures and penalties. The proceedings were closely monitored by staff members from both the FCC and the U.S. Department of Justice. It seems likely that the Texas plan may become a blueprint for other states and, possibly, the FCC.

On the one hand, BellSouth argues that performance measures and damages are inappropriate and illegal. On the other hand, BellSouth has acknowledged that the company is presently working on a proposal that is similar to the Texas plan and which includes performance measures and liquidated damages. BellSouth, however, has said it will not agree to the company's own plan in any state until after that state commission approves BellSouth's 271 application. Brief of Sept. 7, 1999, p. 10. If performance standards and damages are needed to make competition workable, the TRA should adopt them in this proceeding. Otherwise, the interconnection agreement will not succeed.

¹ In light of the FCC's explicit decision to decline to preempt state consideration of additional UNEs, BellSouth's assertion that the issue of packet switching has been "resolved by the FCC" (Brief at 2) is incredible.

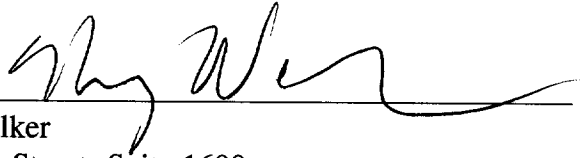
Clearly ICG has the right, as NEXTLINT and MCI did, to present its evidence on this issue in this arbitration proceeding.²

The Initial Order of the Hearing Officer should be affirmed.

Respectfully submitted,

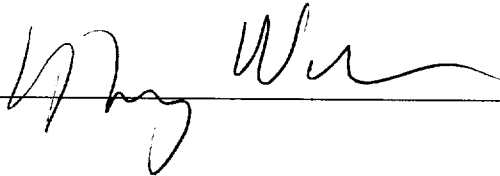
BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: _____


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Arbitration Petition in the above captioned proceeding has been hand-delivered to the office of Guy Hicks, BellSouth Telecommunications, 333 Commerce St., Suite 2101, Nashville, Tennessee 37201-3300 on this the 23 day of September, 1999.



² The Hearing Officer held that "penalties" (*i.e.* fines issued by the TRA or liquidated damages which are unreasonable) are not an appropriate subject for this arbitration but that "liquidated damages," of the type commonly used in BellSouth's tariffs and CSAs, may be considered. ICG does not object to that determination.